

June 22, 2018

By Electronic Delivery to:
<http://www.fcc.gov/ecfs/>

Ms. Marlene H. Dortch
Office of the Secretary
Consumer and Governmental Affairs Bureau
Federal Communications Commission
455 12th Street SW, Room TW-A325
Washington, DC 20554

Re: Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision¹

Dear Ms. Dortch,

This letter is submitted on behalf of Wolters Kluwer in response to the *Public Notice: Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision* ("Public Notice")² from the Federal Communications Commission (the "Commission").

Wolters Kluwer is a leading provider of compliance solutions, technology and services to financial institutions across the United States. The vast majority of U.S. banks uses Wolters Kluwer solutions, such as deposit, lending and IRA documents, disclosures, software, training, support and consulting services. In addition, many core processors and software developers use our compliance-related documents and other components in their products.

Some of the many Wolters Kluwer services include helping financial institutions with disclosures and other requirements under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.³ Wolters Kluwer appreciates the opportunity to provide suggestions regarding the implementing regulations in this letter.

The Commission's Question:

In the *Public Notice*, the Commission seeks comment on how a called party may revoke prior express consent to receive robocalls. Specifically, the Commission seeks comment on:

- a. What opt-out methods would be sufficiently clearly defined and easy to use such that 'any effort to sidestep the available methods in favor of idiosyncratic or imaginative revocation requests might well be seen as unreasonable'?
- b. And must callers offer all or some of combination of such methods to qualify?⁴

¹ ACA Int'l v. FCC, No. 15-1211, 885 F.3d 687 (2018 U.S. App. LEXIS 6535) (March 16, 2018).

² CG Docket Nos. 18-152, 02-278 (rel. May 14, 2018) (*ACA Public Notice*).

³ Regulations promulgated at 47 CFR 64.1200 et seq.

⁴ *ACA Public Notice*, at 3.

Comment:

The existing guidance from the Commission dictates that callers may not unilaterally designate the acceptable means of revocation.⁵ Although the court in *ACA International* did not set aside that portion of the Commission's ruling, we encourage the Commission to permit callers to indicate and limit acceptable means of revocation. This will typically be part of the bargained-for agreement entered into between the caller and the called party. Courts have held that not only is it reasonable to require that called parties may not unilaterally revoke consent, but also if a method of revocation is included as part of a bargained-for agreement, the called party must comply with that method of revocation.⁶ We encourage the Commission to adopt a similar approach.

In addition to permitting parties to agree on a means of revoking consent, the Commission should provide certain examples of safe harbor options which callers may use (with the called parties' consent) to establish methods of revoking consent and which the Commission views as reasonable under the totality of the circumstances. Courts have found certain bargained-for methods of revocation to be reasonable under the totality of the circumstances. These have included texting specified single-word commands, such as "STOP", "CANCEL", "QUIT", "UNSUBSCRIBE", "END".⁷ The Commission may also wish to provide for future technological advances by updating this list periodically. The Commission should also keep in mind that not all callers may have the technological resources at their disposal to offer the full complement of revocation methods that the Commission is contemplating. Technological cost and other limitations should not be used to prevent smaller business callers, such as smaller credit unions or community banks, from communicating effectively with their customers.

The Commission should also clarify whether revocation of consent may be made in whole or in part. The parties should be able to agree that revocation applies to all methods of contact or only to a single method of contact. For example, if a called party initially agrees to be contacted by text or by phone call, revocation of permission to be contacted by text should not necessarily revoke permission to be contacted by phone call. The parties should also be able to agree that revocation applies to all aspects of the business relationship or only to a single aspect of the relationship. For example, if a called party revokes consent to be contacted by phone by their financial institution regarding the collection of a debt, the called party may not at the same time wish to revoke consent to be contacted by phone by their financial institution when the balance on their checking account falls below a certain threshold.

Wolters Kluwer appreciates the opportunity to comment on this Public Notice. If you have any questions, please feel free to contact us at Therese.Kieffer@WoltersKluwer.com.

Respectfully submitted,

/s/ Therese Kieffer
Therese Kieffer
Associate Attorney
Regulatory Compliance Analysis

⁵ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd. at 7996-7999, 7961 (July 10, 2015).

⁶ *Barton v. Credit One Fin.*, No. 16CV2652, 2018 U.S. Dist. LEXIS 72245 (N.D. Ohio Apr. 27, 2018).

⁷ See *Viggiano v. Kohls Dep't Stores*, No. 17-0243, 2017 U.S. Dist. LEXIS 193999 (D.N.J. Nov. 27, 2017), as well as *Epps v. Earth Fare, Inc.*, No. 16-8221, 2017 U.S. Dist. LEXIS 63439, 2017 WL 1424637 (C.D. Cal. Feb. 27, 2017).